



The Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness

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September 12, 2023

Mr. Joshua M. Yohe, Counsel
Criminal Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635

Re: Revised Notice of Proposed Rulemaking: Amendment of Pa.R.Crim.P. 632

Dear Mr. Yohe:

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness (the “Commission”), we are writing in response to the Notice of Proposed Rulemaking: Proposed Amendment of Pa.R.Crim.P. 632, published by the Criminal Procedural Rules Committee on August 12, 2023. Thank you for this opportunity to comment on the proposed amendments and for graciously attributing the impetus for the proposal to our Commission. We write in support of the proposed changes, which evidence a commitment to improving diversity on Pennsylvania’s juries, and offer a recommendation for one additional amendment.

As you likely recall, our Commission submitted a letter to the Criminal Procedural Rules Committee in June 2022, proposing the changes to Rule 632 memorialized in the Committee’s prior Notice of Proposed Rulemaking, published in March 2023. We believe that those changes will encourage judicial districts to collect and retain demographic data and thus establish a baseline from which to increase jury diversity across the Commonwealth. We maintain that the proposal strikes a balance between preserving prospective and empaneled juror privacy while giving districts the tools to more closely adhere to the constitutional requirement that their juries comprise a representative cross-section of the community.¹

As part of those comments, we also noted that districts are better equipped to collect and analyze such data if the individuals to whom demographic questions are posed feel incentivized to answer those questions. Accordingly, we approve of the Committee’s addition of a Gender query to the

¹ *Taylor v. Louisiana*, 419 U.S. 522 (1975).

Juror Information Questionnaire. However, we recommend that the Committee amend its proposal by crafting a gender identifier that more simply and inclusively provides, “Gender: ____.”

As proposed, the Questionnaire would permit a prospective juror to identify their gender as “Male,” “Female,” or “Other: ____.” Although the “Other” option does allow an individual to provide the specific gender with which they identify, it still runs the risk of “othering” a gender diverse person, leaving them disinclined to participate in jury service if they feel alienated, misunderstood, or outed. A simpler gender identifier, consistent with the language we proposed above, avoids this scenario, placing gender diverse persons on equal footing with cisgendered individuals, by requiring *everyone* to manually complete the query.

The Commission believes this amendment would signal to a growing number of individuals within the LGBTQ+ community that our courts value their participation in the fair adjudication of jury trials conducted in our Commonwealth. In January 2023, numerous LGBTQ+-advocacy groups, in partnership with the Pennsylvania Department of Health, published their biannual survey, entitled the “2022 Pennsylvania LGBTQ[+] Public Health Needs Assessment.”² The Assessment reached 4,228 self-identifying LGBTQ+ Pennsylvanians representing 66 of the 67 counties in our Commonwealth, making it one of the most comprehensive snapshots of such data available. Of those individuals who completed the survey, 95% are 18 years of age or older and are presently eligible to serve on a jury.


Equally as important was the survey’s finding that 1,749 respondents (42.4%) identified as transgender, gender nonconforming, or non-binary.³ While the survey reached many participants, its completion required both internet access and literacy, thus potentially undervaluing both this percentage and the number of such individuals residing in our Commonwealth. It is with the appreciable number of gender diverse Pennsylvanians in mind that we petition the Committee to amend its Gender query in a manner consistent with our simpler and more inclusive language set forth above.

Aside from this suggestion, we are pleased to convey our support for the Committee’s proposed amendments to Pa.R.Crim.P. 632. The provisions contained in the proposal both clarify judicial districts’ ability to collect demographic data and more comprehensively permit jurors to indicate their demographic information. If you have any questions or concerns regarding our comments, please do not hesitate to contact me by phone, at (717) 998-1297, or by email, at maraleen.shields@pacourts.us. We look forward to continuing to work with you to ensure fairness in the Pennsylvania court system and diversity on Pennsylvania’s juries.

² Res. & Evaluation Group at Pub. Health Mgmt. Corp. and Bradbury-Sullivan LGBT Community Ctr., *2022 Pennsylvania LGBTQ Health Needs Assessment* 1, 2 (Jan. 2023), available at https://assets.nationbuilder.com/bradburysullivancenter/pages/2872/attachments/original/1673023325/2022_PA_LGBTQ_HNA_Report_Final_approved.pdf?1673023325

³ *Id.* at 2, 53.

Sincerely,



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Executive Director



Lynn Marks, Esq.
Chair, Jury Service Committee



Brendan Bertig, Esq.
Staff Attorney

cc: Interbranch Commission Members
Interbranch Commission's Jury Service Committee Members